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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,722	05/29/2001	Grant W. Doney	3343.14	5947

7590 04/16/2003

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EXAMINER
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WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

12

DATE MAILED: 04/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on January 24, 2003

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1-3, 5-10, 12, 14-17, 22, 38-43, 45, 52, 54, 56-59 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-3, 5-10, 12, 14-17, 22, 38-43, 45, 52, 54, 56-59 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Priority*

1. Claims 4, 11, 13, 18-21, 23-37, 44, 46-51, 53, 55 and 60-68 have been cancelled per Applicant's amendment filed January 24, 2003. Claims 1-3, 5-10, 12, 14-17, 22, 38-43, 45, 52, 54 and 56-59 are pending.

### *Claim Rejections - 35 USC § 112*

2. Claims 1-3, 5-10, 12, 14-17, 22, 38-43, 45, 52, 54 and 56-59 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide express support for the term "elastomeric" now qualifying the secondary polymer. Since no express support for said term can be found, such is deemed New Matter.

### *Claim Rejections - 35 USC § 102/103*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 5-9, 12, 14-16, 39, 42, 54, 56 and 58 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 4,792,586 (Han).

Han discloses a blend comprising (A) about 20-60% by weight of at least one polyphenylene ether, (B) 25-65% by weight of at least one linear polyester, (C) about 2-20% by weight of at least one elastomeric impact modifier and (D) about 1-10% by weight of at least one polyisocyanate. The polyphenylene ether is prepared using a variety of catalyst systems (column 3, lines 12-34).

As presently recited, Applicants' primary thermoplastic crystalline polymer reads on either or both of the reference's polyphenylene ether and linear polyester components. As presently recited, Applicants' secondary elastomeric polymer reads on the reference's elastomeric impact modifier component. As presently recited, Applicants' isocyanate compound reads on the reference's polyisocyanate component. As presently recited, Applicants' catalyst reads on the catalyst system utilized for the preparation of the polyphenylene ether.

The composition disclosed by the reference meets the requirements of the present claims both in terms of the types of materials added and their contents. The onus is shifted to Applicant to establish that the products of the present claims are not the same as or obvious as those set forth by the reference.

***Claim Rejections - 35 USC § 103***

6. Claims 17, 22, 38, 40, 41, 45, 52, 57, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,792,586 (Han) described hereinabove.

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It is maintained that it would have been obvious to one having ordinary skill in the art to have further added a conventional adjuvant, e.g., stabilizer, more than one catalyst and specific polyisocyanate species for their expected additive effect because it is within the general purview of the reference to do so. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the subject matter of the above-rejected claims.

*Response to Amendments*

7. Applicant's amendments filed January 24, 2003 have effectively obviated the rejections over Willett et al and Comert et al..

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

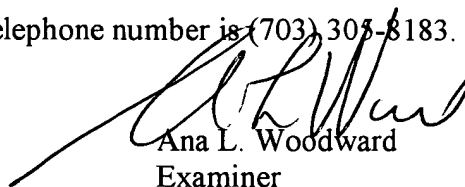
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 303-8183.

A handwritten signature in black ink, appearing to read 'Ana L. Woodward', is written over the printed name.

Ana L. Woodward  
Examiner  
Art Unit 1711

AW  
April 14, 2003